

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SOLERS, INC.,	.	Civil Action No. 1:14cv1548
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	May 15, 2015
INTERNAL REVENUE SERVICE,	.	10:09 a.m.
	.	
Defendant.	.	
	.	
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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	MARIAM W. TADROS, ESQ. Rees Broome, PC 1900 Gallows Road, Suite 700 Tysons Corner, VA 22182
FOR THE DEFENDANT:	R. JOSEPH SHER, AUSA United States Attorney's Office 2100 Jamieson Avenue Alexandria, VA 22314 and KAVITHA BONDADA, ESQ. United States Department of Justice Tax Division P.O. Box 227 Ben Franklin Station Washington, D.C. 20044
OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

P R O C E E D I N G S

THE CLERK: Civil Action 14-1548, Solers, Inc. v. Internal Revenue Service. Will counsel please note their appearances for the record.

MS. TADROS: Good morning, Your Honor. Mariam Tadros here on behalf of the plaintiff, Solers, Inc.

THE COURT: Good morning.

MR. SHER: Good morning, Your Honor. Joseph Sher on behalf of the Service. With me is Kavitha Bondada of the Department of Justice's Tax Division. Ms. Bondada will present the government's position with the Court's permission.

THE COURT: All right. Well, I'm not sure I need to hear much argument. This has been extensively briefed, and as you know, in order to make sure that I could get a good handle on this case, frankly, because there were so few documents, I would normally not do this in a FOIA case, but it was down to about 12 documents, we ordered, as everyone knows, the government to come forward and make an ex parte in camera presentation.

I'm going to keep those materials in the permanent file of the Court so they're there for any appellate purposes, but that enabled the Court to review them directly so that any issue about an inadequate Vaughn Index, I think, is completely eradicated because the documents have been thoroughly reviewed.

What is left in this case are six pages of documents

1 that were withheld in full and six pages that were produced to
2 the plaintiff but with redactions. So the issue there is
3 whether the redactions are appropriate.

4 The IRS has argued that it can withhold two pages in
5 part; that is, it can prevent two of those, sets of -- two
6 pages of those redactions because what they contain are the DIF
7 scores, and the plaintiff has agreed that the DIF scores are
8 not something that's appropriate to be revealed. So on those
9 two redactions, there is no problem, and I did check, and that
10 is what, in fact, is redacted.

11 The IRS then argues that it can withhold two pages in
12 full because those are a summary report written by the revenue
13 agent, and then there's a graph containing third-party
14 information, and that that would fall under Exemption 3 of FOIA
15 as well as 6103(a) of Title 26. Those two documents do contain
16 identifying information for third parties, and again, I have
17 reviewed both of them, and therefore, the defendant's position
18 is correct in terms of not disclosing those.

19 Then the IRS argued that it can withhold six pages in
20 full, and those consist of four pages of handwritten notes, and
21 I have to tell you, they're almost indecipherable. Every now
22 and then, you can maybe make out a word, so I'm not sure what,
23 if any, value they would give the plaintiff anyway, but from
24 the bit I can tell, they're obviously the notes of the revenue
25 agent, and, you know, I assume that agent could read his own

1 notes or her own notes and know what they said, but again, I
2 believe that those are properly withheld under FOIA as under
3 Exemption 5, because they do represent the thought process.
4 Obviously, they would represent the key or salient points that
5 that agent was writing down.

6 So they either reflect the mental processes of the
7 revenue agent and thoughts on possible direction of the
8 investigation, or they reflect an area where the revenue agent
9 sought relevant legal advice, and therefore, summary judgment
10 is appropriate in that respect.

11 And then the remaining three pages, which again were
12 redactions, the government employs Exemptions 6 and 7(c)
13 because the relevant documents contain again identifying
14 information of other individuals. There are names of some
15 people. They are the type of report, 1040, that was being
16 reviewed.

17 And I know you've argued that sometimes a person can
18 waive privacy, but that's an interesting problem because in
19 order to know that you can waive, the IRS would have to
20 identify the person, and that's what they really can't do, and
21 so I would think the only thing you could possibly do is if you
22 believe you know who those persons might be -- and, Mr. Sher,
23 you can correct me on this -- if Mr. X were to say, "I believe
24 one of my records might have been looked at by the IRS, and I
25 waive any privacy rights that I have to that," would that not

1 then at least as to that particular exemption absolve the IRS
2 or render that particular exemption no longer in effect?

3 MS. BONDADA: Yes, Your Honor.

4 THE COURT: All right. So that would be the way of
5 resolving that. If there are some employees or owners of your
6 entity or third parties who you think might be relevant to this
7 case and you believe that those persons might be the ones --
8 and I think there are only two or three names that I recall
9 seeing here that are within this area of withheld
10 information -- provide that to the government in whatever form
11 is needed, I would assume it would be an affidavit or something
12 from that individual, and then you've got on the record that
13 they will no longer withhold that piece of information.

14 MS. TADROS: If I may be heard on that point, Your
15 Honor?

16 THE COURT: Yes.

17 MS. TADROS: We've actually, we've guessed at the
18 three names, and we provided three authorizations to the
19 government around the same time that we filed our latest
20 filing. So to the extent that that -- their information is
21 contained within those documents, we think that they should be
22 released.

23 THE COURT: Have you-all checked into that? Does
24 that change my ruling on any of the redacted materials?

25 MS. BONDADA: So, Your Honor, the forms that we

1 actually received were power of attorney forms, and they're not
2 typically the forms that the Service would use to release 6103
3 information, and the forms that we received were not signed by
4 the attorneys who were receiving that power of attorney, and as
5 a result, at this time, the Service is reviewing these forms to
6 determine whether or not it can release the information.

7 THE COURT: But just tell me, are they the proper
8 people, if you recall? Do they match the names we're talking
9 about in these documents?

10 MS. BONDADA: So, Your Honor, with all due respect, I
11 can't confirm or deny whether or not they're the proper people
12 without the proper authorization form. Unfortunately --

13 THE COURT: You've already revealed the names to me
14 in camera. I know who the names are because I saw the
15 documents.

16 MS. BONDADA: Yes, Your Honor, but opposing counsel
17 hasn't seen the documents.

18 THE COURT: Right, but you're not telling me their
19 names. You're just saying to me among -- oh, I see what you're
20 saying. Yeah, all right, you can't do that.

21 MS. BONDADA: I'm sorry, I can't answer that.

22 THE COURT: Okay. Well, you know what to do, all
23 right? But anyway, I'm granting the motion for summary
24 judgment, and that will end this litigation, I believe,
25 correct?

1 MS. TADROS: Yes, Your Honor.

2 THE COURT: Thank you.

3 MS. TADROS: Thank you.

4 (Which were all the proceedings
5 had at this time.)

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7 CERTIFICATE OF THE REPORTER

8 I certify that the foregoing is a correct transcript of
9 the record of proceedings in the above-entitled matter.

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/s/

Anneliese J. Thomson

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